

(2010) 07 BOM CK 0028

Bombay High Court (Goa Bench)

Case No: Writ Petition No. 320 of 2010

The Sankhali Citizens
Development Forum

APPELLANT

Vs

The State of Goa and
7 Others

RESPONDENT

Date of Decision: July 22, 2010

Hon'ble Judges: F.M. Reis, J; A.S. Oka, J

Bench: Division Bench

Advocate: S.D. Lotlikar and Mr. H. Kankonkar, for the Appellant; S.S. Kantak, Advocate General and Mr. P. Talaulikar, Additional Government Advocate for the Respondent Nos. 1 to 4 and 7, for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. We have heard the learned Senior Counsel appearing for the Petitioner and the learned Advocate General appearing for the Respondent Nos. 1 to 4 and 7. The Petitioner which is a society registered under the Societies Registration Act, 1860 has purported to file this Petition in public interest for challenging the construction work of barrage (bandara) across the Valvanti river on the strength of N.O.C. dated 7th July, 2008 issued by the Sanquelim Municipal Council. The learned Senior Counsel appearing on behalf of the Petitioner has taken us through the various annexures of the Petition. He has also taken us through the report of National Institute of Oceanography dated 23rd June, 2010, which is submitted in terms of the direction issued by this Court on 22nd April, 2010.

2. The learned Senior Counsel appearing for the Petitioner invited our attention to the No Objection Certificate (hereinafter referred to as the "N.O.C") granted by the Sanquelim Municipal Council. He pointed out that the N.O.C was granted on the basis that since the bandara is of open type bandara it will not cause any serious problem of blockage of water. He pointed out that the N.O.C is conditional and it also records that the same will be withdrawn if the construction of the bandara is

made as pucca cement bandara. He pointed out that the N.O.C relates to a particular spot mentioned therein namely Makhar rhenava at Viridi, Sanquelim and the location of the bandara has undergone a change. He has tendered across the bar the information made available to the Petitioner on 3rd June, 2010 by the Executive Engineer on the basis of the application made by the Petitioner under Right to Information Act, 2005. Inviting our attention to the plan annexed to the Petition, he pointed out that the alignment and location of the bandara is sought to be changed. He also invited our attention to the order dated 14th March, 2006 passed by the Chief Engineer and Ex-Officio Addl. Secretary to the Government which sanctions only a sum of Rs. 96,49,500/-for the said work. Inviting our attention to the communication accepting the tender, he pointed out that the estimated cost shown therein is of more than four crores.

3. He invited our attention to the averments made in the Petition that the construction sought to be undertaken for the benefit of Sesa Goa Company which is a mining company. He invited our attention to the various averments made in the Petition and pointed out that there has not been a proper environmental impact assessment as far as construction of the barrage across the river is concerned and the same is sought to be hurriedly done by the Government for the benefit of the aforesaid company. He invited our attention to the consequences of construction of bandara by inviting our attention to certain photographs. He pointed out that the drastic consequences of the construction of the barrage will affect the large number of citizens. Lastly, he invited our attention to the report of the National Institute of Oceanography (hereinafter referred to as "N.I.O"). He pointed out that the report indicates that the N.I.O does not possess sufficient expertise to give an opinion and in fact it suggested that most appropriate agency will be the Central Water and Power Research Station (hereinafter referred to as "CWPRS"). He pointed out that the N.I.O has observed that the said authority is equipped to deal with issue concerning barrages on rivers. He submitted that unless the said CWPRS clears the project, no construction can be allowed to be commenced.

4. The learned Advocate General appearing for the Respondents has invited our attention to the reply filed to the Petition in which it is pointed out that the work to the extent of Rs. 2.34 crores has been already carried out and out of which a sum of Rs. 1.9 crores has been disbursed. He tendered across the bar a quotation issued by the Central Water and Power Research Station, Pune, Government of India for undertaking Hydrodynamic Mathematical model studies for the said barrage. He stated that the amount claimed by CWPRS will be paid by the State Government and CWPRS will be consulted regularly not only till the completion of project but also for a period of two years from the date of completion of the project. He submitted that no interference is called for.

5. The learned Senior Counsel appearing for the Petitioner pointed out that submission made by the learned Advocate General shows that before obtaining

opinion of CWPRS, the State Government wants to hurriedly complete the work of barrage. He submitted that without obtaining the opinion of CWPRS, the work should not be permitted to proceed considering the drastic consequences of the construction of barrage which will affect the large number of citizens.

6. We have given careful consideration to the submissions. To the Writ Petition, the Petitioner has annexed a report dated 26th November, 2008 of the CWPRS regarding the construction of barrage across the Valvanti river at Viridi, Taluka Bicholim which records the estimated cost of Rs. 4,55,21,420/-. There is a detailed history mentioned in the said report. A reference is made to the meeting between Ex-Chief Minister and present Speaker of the Assembly who directed to go ahead and conduct survey and put up the estimate for the approval of the Government. It is recorded that thereafter the site was visited by various officers and site feasibility study was conducted. There is a further report of the same authority which is annexed at Exhibit - D which is dated 2nd December, 2008. The report records the advantages of having a barrage across the river. The N.O.C issued by the Sanquelim Municipal Council refers to construction of open type bandara by the Sesa Goa at Makhar rhenava at Viridi, Sanquelim Goa. The learned Senior Counsel appearing for the Petitioner submitted that there is no N.O.C for construction of cement bandara. However, statutory requirement of the State Government obtaining N.O.C of the Municipal Council is not shown. It is true that the communication dated 14th March, 2006 issued by the Chief Engineer and Ex-Officio Addl. Secretary to the Government records a sanction for the Rs. 96,49,500/-for the said work. We have pointed out that the CWPRS on 26th November, 2008 had estimated the cost at rupees four crores and more which is reiterated in the subsequent report dated 2nd December, 2008. There is a further report of the same agency which is annexed at page 52 of the Petition which also gives the same figure of estimate. Thereafter, there is an order dated 30th April, 2009 issued by the Chief Engineer approving the expenditure amount of Rs. 4,55,21,420/-. Therefore, the communication dated 14th March, 2006 will not help the Petitioner to show any irregularity in the tender amount.

7. It will be necessary to consider the report of N.I.O which is submitted in terms of ad-interim order passed by this Court. The relevant part of the report reads thus :

In view of the above, the NIO team finds that the objections of the Sankhalim Citizens Committee concerning the barrage on the Valvanta are not supported by present understanding of the Mandovi-Zuari estuarine system. Furthermore, it may be noted that all activities related to the construction of the barrage (and therefore the consequences) are completely reversible. In the event of the barrage being found subsequently to cause some unanticipated damaging influence, it can be eliminated simply by adjusting the gates of the barrage and bringing the situation to its current state (no barrage).

Finally, though NIO carried out this task assigned to it by the Honourable High Court, the institute studies primarily marine systems and does not consider itself

adequately equipped to deal with issues concerning barrages on rivers. A more appropriate agency for such a study would be the Central Water and Power Research Station (CWPRS) based in Pune. CWPRS has considerable experience with river systems and should be consulted for future activities. However, NIO Team feels that work related to the bandhara can continue while consultations with CWPRS go on.

(Underlines supplied)

Thus, the opinion of N.I.O is that in the event of the barrage being found to be causing some unanticipated damaging influence, it can be eliminated simply by adjusting the gates of the barrage and bringing the situation to its current stage where there is no barrage. It is also noted in the report that all activities related to the construction of the barrage and consequences thereof are completely reversible. We have already referred to various documents showing that CWPRS is already in picture. Apart from that, the learned Advocate General has made a statement that till completion of the project, the CWPRS will be regularly consulted and even for a period of two years after the completion of the project, the said agency will be regularly consulted.

8. Apart from this, in the reply filed by the State Government, it is stated that as of 31st March, 2010 the work to the extent of a sum of Rs. 2.34 crores has been already carried out for which a sum of Rs. 1.9 crores has been already disbursed. Apart from substantial expenditure incurred by the Government on the project, now there is an opinion of N.I.O which records that in case of any damage caused by the barrage, the entire process can be completely reversed and barrage can be eliminated by bringing the situation to its current state. The State Government has not disputed the opinion expressed by the N.I.O. On the contrary, on the basis of the opinion, the learned Advocate General has stated that CWPRS will be consulted. We accept the aforesaid statement of the learned Advocate General which we have recorded in the earlier paragraph.

9. Considering the fact that a large amount has already been spent and considering that the construction of barrage can be completely reversed, at this stage, we are not interfering at the instance of the Petitioner. Another reason for not entertaining the Petition is that the State Government has agreed to consult the CWPRS till completion of the project and for a period of two years thereafter. After completion of the construction of the barrage, if it causes a damage of serious nature, the State Government will have to take appropriate steps in terms of the recommendation of the N.I.O for reversing the process.

10. It is alleged that there is no CRZ clearance for the project. In the affidavit in reply, it is stated that the CRZ clearance is not required for the purpose of construction of barrage. For the reasons we have assigned, we are not interfering with the project at this stage. A large amount of expenditure has been already incurred. However,

the issue of requirement of CRZ clearance is kept open. Subject to what is observed above, at this stage, no interference is called for. Petition is disposed of.